

MEMORANDUM

TO: Members, Clark Fork Basin Water Management Task Force (Task Force)
FROM: Gerald Mueller
SUBJECT: Summary of the January 25, 2006 Task Force Meeting
DATE: January 28, 2006

Participants

The following people participated in the Task Force meeting:

Task Force Members:

Harvey Hackett	Bitterroot Water Forum
Bill Slack	Flathead Joint Board of Control
Fred Lurie	Blackfoot Challenge
Jim Dinsmore	Upper Clark Fork
Matt Clifford	Clark Fork Coalition
Arvid "Butch" Hiller	Mountain Water Company
Elan Darrow	Flathead Basin Commission
Jay Stuckey	Green Mountain Conservation District
Gail Patton	Sanders County
Holly Franz	PPL Montana
Marc M. Spratt	Flathead Conservation District/Flathead Chamber of Commerce
Rep. Verdell Jackson	House District 6

Staff:

Gerald Mueller	Consensus Associates
Mike McLane	Montana Department of Natural Resources and Conservation (DNRC)

Other:

Rich Moy	DNRC
Larry Dolan	DNRC
Bill Schenk	Montana Department of Fish, Wildlife & Parks
Phil Tourangeau	CS&KT
Rhonda Swaney	CS&KT
John Kilpatrick	United States Geological Service (USGS)
John Roache	United States Bureau of Reclamation (BOR)
Warren Sharp	BOR

Meeting Agenda

- Task Force membership
- BOR Clark Fork River model
- CS&KT legal staff meeting
- Hungry Horse negotiations next steps
- Possible DNRC funding
- Ground water conference discussion
- Water Rights Adjudication Update
- Review work plan
- Public Comment
- Schedule meeting

Task Force Membership

Gerald Mueller reported that he had met yesterday with DNRC Director Mary Sexton and discussed Task Force membership. Ms. Sexton stated that she thought her letter of November 8, 2005 confirmed the Task Force membership. In that letter she specifically approved adding Arvid Hiller and James Steele, Jr. to the Task Force. Mr. Mueller asked her to send a letter including an official list of Task Force members, and she agreed to do so. The Task Force discussed whether to add members of Resource Conservation and Development Councils (RC&Ds) to represent business and economic development interests. The executive directors of these organizations are employees of the Natural Resources Conservation Service, a federal agency. Task Force members agreed that its members should be or represent water users and not agency representatives. However, the executive directors of one or both of the Clark Fork River basin RC&Ds, the Northwest Regional RC&D and Headwaters RC&D could serve as *ex officio* members. The Flathead Lakers, an organization of homeowners and others with interest in Flathead Lake, and the Flathead Chamber of Commerce are other possible groups to consider for Task Force membership. Mike McLane agreed to try to identify possible business/economic development interests who might want representation on the Task Force.

BOR Clark Fork River Model

System Overview - Warren Sharp from the BOR Yakima office provided an overview of a system of models used by the BOR in modeling rivers. The first component of the system is the Precipitation Runoff Modeling System (PRMS). PRMS calculates basin runoff from temperature and precipitation data. The unregulated flows from PRMS are then input into Riverware, a model which incorporates a series of rules for movement of water, such as storage operation, water rights, and minimum required instream flows. Riverware can operate in hourly, daily, weekly, or yearly time step. This model can be used in a planning mode to assess impacts of different operational constraints and an operational mode to schedule water management activities. For the Yakima basin in which anadromous salmon and steelhead are a critical consideration, the regulated flows produced by Riverware are input into the River Analysis model. This model incorporates physical channel information and the regulated flows from Riverware to calculate water depth and velocity, wetted perimeter, and water surface width. This information is then input into the Ecosystem, Diagnostic, and Treatment (EDT) model which calculates numbers of fish. For the Yakima River, EDT is operated by a committee of biologists, including representatives of federal and state fishery agencies and irrigation districts.

Question - Has this system of models been subjected to peer review?

Answer - It has been reviewed within the BOR. In the Yakima, we also have a technical committee including representatives of the various stakeholders to build and review the models.

Question - Can Riverware incorporate water rights?

Answer - Yes, by using a table of water right specified diversions at specified locations, the model can distribute water pursuant to water rights. Other models such as MODSYM and MODFLOW are also used to address water rights. The latter models are used for the Snake River basin.

Question - Does documentation exist for this system of models?

Answer - Not yet, but documentation is under development and should be completed in 2007.

Question - Why did the BOR choose these particular models rather than existing commercially available models?

Answer - The BOR made the decision to develop this system and not use proprietary commercial models for reasons of cost and model accessibility. We do not have to pay a fee for each model run and wait for the model owner to make runs for us. We operate the model ourselves.

Question - Has this modeling system been used in lawsuits?

Answer - Not that I am aware.

Question - In what river basins has this modeling system been used?

Answer - The BOR has used it for the Colorado, Rio Grande, Truckee-Carson, Umatilla, and Methow Rivers. The PRMS and Riverware models are being developed for the South Fork of the Flathead to manage Hungry Horse releases.

PRMS - John Kilpatrick, from the Helena USGS office, used a Power Point presentation to describe in more detail how the PRMS works. Mr. Kilpatrick is currently adapting this model for the South Fork of the Flathead River. A copy of his presentation is attached as Appendix 1.

Riverware - John Roache described how he uses the Riverware software to plan and schedule water releases from Hungry Horse.

Question - Has your use of this model been documented?

Answer - No.

Question - Could Riverware be used to plan and assess the impacts of water released pursuant to a contract for water stored in Hungry Horse, and could it also be used to walk water down the Clark Fork to delivery to specific points?

Answer - Yes.

Comment - Because the Tribal water rights are unspecified, these models could not be used to forecast water use accurately.

Response - The purpose of the models is not to predict water use but to assess the effects of particular constraints and/or to schedule water use activities such as releases from Hungry Horse.

CS&KT Legal Staff Meeting

Gerald Mueller reported on the meeting that he and Marc Spratt on December 1, 2005 with members of the Confederated Salish and Kootenai Tribal Legal Department. Tribal officials attending the meeting included John Carter, Rhonda Swaney, Dan Decker, Jr., and Phil Tourangeau. Mr. Mueller reviewed his December 1, 2005 memo reporting on the meeting. The memo is attached below as Appendix 2 below.

Hungry Horse Negotiations Next Steps

The Task Force agreed to three next steps. First, we will encourage the state to seek an answer to Ms. Sexton's November 4, 2005 letter to then Tribal Chairman Fred Matt suggesting that the Governor and the Tribes jointly approach the BOR to ask how much water it could make available out of storage at Hungry Horse Reservoir. Second, we will request that the state, independent to the Tribe's response to Ms. Sexton's letter, begin discussions with the BOR about the process for determining how much Hungry Horse water state water users need and how much of it may be available for a contract with the state. Finally, Rich Moy agreed that the DNRC will develop scenarios of future basin water use that might be used in an analysis of a contract for Hungry Horse water.

Possible DNRC Funding

Rich Moy stated that Mary Sexton has identified a source of funding for four large basin groups working in the Clark Fork, Flathead, the Missouri, and Yellowstone basins, respectively. The Clark Fork Task Force might be in line for \$20,000. Ms. Sexton is also interested in convening a Clark Fork Basin roundtable with all of the basin's watershed groups, probably during this spring.

Ground Water Conference Discussion

At its November meeting, the Task Force decided to convene a steering committee to assist with designing a ground water conference and exploring potential convening partners. A steering committee was formed. Its members were: Bob Davis, USGS; John LaFave and Tom Patton, Bureau of Mines and Geology; Mike McLane, DNRC; Joe Meek, Montana Department of Environmental Quality; Gretchen Rupp, Montana Water Center; Marc Spratt, Task Force; Bill Woessner, Riverine Center; and Gerald Mueller, Task Force Facilitator. A conference call with this group was held on December 7, 2005. Mr. Meek was unable to participate in the call. A summary of this call is attached as Appendix 3.

One of the next steps resulting from this call was a request to the Bureau of Mines and Geology that they prepare a background paper for the conference participants. The Bureau agreed to provide a cost estimate for preparing this paper if the following questions were answered:

- What is the conference focus?
- Will it be technical or policy oriented?
- If it is technical, what areas will be addressed?
- Who is the target audience?
- What is the appropriate background information for the attendees?

The Task Force discussed these questions and answered them as follows:

- Conference Focus - The Task Force's long-term goal concerning ground water and surface water is an interactive management model for each sub-basin and eventually the basin as a whole. The focus for the conference is answering three questions: What do we know about the Basin's ground water and its interaction with surface water? What do we need to know? How do we acquire that information? The Task Force's long-term goal concerning ground water and surface water is an interactive management model for each sub-basin and eventually the basin as a whole.
- Technical or Policy Orientation - The first conference should be technical. A separate follow-on conference would target policy issues.
- Technical Areas to Address - Identifying sources for each aquifer and quantifying ground water resource.
- Target Audience - Agency and private sector hydrologists, university scientists, well drillers, invited policy makers and funders, and invited planners.
- Conference Participant Background Information - A Clark Fork Basin ground water primer written in lay person language.

Water Rights Adjudication Update

Mike McLane provided an update about DNRC's adjudication activities. Using the water right centralized record data base of water right names and addresses, bills for the adjudication fee mandated by the last legislature have been mailed. About 20,000 pieces of this mailing were returned as non-deliverable due to incorrect names, addresses, deaths, etc. About 50% of the total of the fees have been paid. DNRC called back 25 retired and other former employees to answer the telephones in response to the fee mailing. These people are answering the telephone 12 hours a day, six days a week. DNRC has also established an appeals process for the bills. Some people have contacted the DNRC because they have not received a bill. One positive outcome of this process is correcting the centralized data base. Some water users who made larger volumetric water rights claims have decided to drop their claims rather than pay the required fee, probably because they do not intend to use their claim, or it was inflated about actual historic use. The staff handling the fees are separate from those examining claims. The claims examination is ahead of schedule.

Question - What happens to people who do not file an appeal and do not pay their fee?

Answer - Penalties begin to accrue after the fee due date. Unpaid bills encumber property sales. A lien is placed on the water right.

Work Plan

The Task Force reviewed and made no changes to its work plan.

Public Comment

There was no additional comment.

Next Meeting

The next meeting was scheduled for March 6, 2006, and future meetings will return to the first Monday of each month. The agenda topics will include: the Hungry Horse negotiations, the ground water technical and policy conferences, the Clark Fork Basin Roundtable, and a report on the DNRC Ground Water-Surface Water Task Force.

Appendix 2
Clark Fork River Basin Task Force
C/O Gerald Mueller
440 Evans
Missoula, MT 59801
(406)543-0026

MEMORANDUM

Date: December 1, 2005
To: Clark Fork Task Force
From: Gerald Mueller
RE: Tribal Meeting

Marc Spratt and I met this morning with several members of the Confederated Salish and Kootenai Tribal Legal Department. The attendees included John Carter, Rhonda Swaney, Dan Decker, Jr., and Phil Tourangeau. Generally, I believe the meeting was productive.

I ran through paper copies of a series of Power Point slides explaining the genesis of the Task Force's Hungry Horse recommendation, how it might be implemented and what it might mean for Tribal water rights. The content of the slides is included below as Appendix 1.

I highlighted the State of Washington's quest for additional water withdrawal from the Columbia and the information provided us at the last meeting by the Northwest Power and Conservation Council's Kerry Berg about the implications of the plaintiff's request before Judge Redden for more water for salmon and steelhead. I also expressed my view that if a collision occurs between state water rights and the federal government's authority to operate its dams and reservoirs, that federal preemption would be likely.

Both John and Rhonda asked about the relationship of contracts for Hungry Horse stored water with senior water rights. I explained my nonlegal view that senior rights holders have the right to make a call to prevent water from being stored but that once the water is stored that the Bureau, pursuant to its water right, can contract for the release of the storage.

After the presentation and discussion, John Carter stated, that while he was not speaking for the Tribes, that so long as the state acknowledges that contracts for stored water could not affect allocations of water based on priority dates and that the Tribes' water rights are senior, that approaching the Bureau of Reclamation to get "a place in line" for Hungry Horse water might be acceptable.

Appendix 3

December 7, 2005

Conference Call Summary

Participants

Bob Davis, USGS
John LaFave & Tom Patton, Bureau of Mines and Geology
Mike McLane, DNRC
Gretchen Rupp, Montana Water Center
Marc Spratt, Clark Fork Basin Task Force (Task Force)
Bill Woessner, Riverine Center
Gerald Mueller, Task Force Facilitator

Call Subject

Discuss the Task Force idea of convening a technical conference about Clark Fork River basin ground water and its interaction with surface water.

Discussion

The following ideas, suggestions, and comments were offered by the call participants;

- In order to answer the Task Force's three questions (what do we know about the basin ground water, what do we need to know, and how to get the needed information), the Task Force needs to identify the purpose for answering them. In other words, what management issues/questions is the Task Force trying to address?
- An appropriate framing question might be, how can we sustain water development in the Clark Fork basin while maintaining the ecological function of its streams and meeting instream and downstream water uses?
- A second framing question might be, how far do we carry science into policy determinations?
- Another possible conference topic might be how other states such as Colorado and Idaho are approaching quantifying, monitoring, and regulating ground water and ground water-surface water interactions.
- The conference might also critique the ground water characterization program to assure that the appropriate types and amount of data is being developed.
- The Water Center and the MSU Wheeler Center are planning a conference on water policy and law on September 18-20 in Bozeman.
- The UM Riverine Center is planning its annual conference for September 21-22.

Next Steps

- Identify Task Force basin water management questions necessary to frame the conference. (*Gerald Mueller*)
- Explore funding for a white paper providing background information for conference participants about the ground water in each of the five subbasins of the Clark Fork, i.e. upper Clark Fork, Blackfoot, Bitterroot, Flathead, and lower Clark Fork. (*Gerald Mueller*)
- Propose a way to input information about other related state activities into the conference. (*Mike McLane*)
- Visit with the Montana Chapter of the Montana Water Resources Association about adding a technical session on the Clark Fork basin ground water to its October 2006 conference in Polson. (*Mike McLane & Gerald Mueller*)
- Find out information about a November conference that Governor Schweitzer may convene about watersheds and economic development. (*Mike McLane*)
- Discuss how the Water Center and the Riverine Center might work together on a water policy conference in late September 2006. (*Bill Woessner & Gretchen Rupp*)
- Reconvene this steering committee in early January 2006. (*Mike McLane & Gerald Mueller*)